

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MONTEREY MUSHROOMS, INC.,

Plaintiff,

Case No.: 5:09-CV-00570
(GTS/DEP)

-vs-

ITHACA PRODUCE, INC., a New York
corporation; RICHARD T. CUTIA, SR., an
individual; RICHARD T. CUTIA, JR., an
individual; and ANNE C. CUTIA, an
individual,

Defendants.

ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION
SHOULD NOT BE ENTERED,
AND TEMPORARY RESTRAINING ORDER

Upon the Affidavit of Robert Klinger, Controller of Plaintiff, Monterey Mushrooms, Inc., sworn on the 12th day of May, 2009; Attorney Certification Why Notice Should Not Be Required Pursuant to Rule 65(b); Memorandum of Law; and other pleadings, papers and proceedings filed heretofore herein, let the Defendant, Ithaca Produce, Inc. ("Ithaca Produce") show cause before this Court on the 26th day of May, 2009 at 2:00 p.m. or as soon thereafter as counsel can be heard, at the United States Courthouse, 100 S. Clinton Street, Syracuse, NY 13261-7367, before the Honorable Glenn T. Suddaby, why an order for Preliminary Injunction should not be entered in accordance with Rule 65(a) of the Federal Rules of Civil Procedure to enforce the statutory trust pursuant to Section 5(c) of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c), by segregating all trust assets of Ithaca Produce, Inc. Sufficient cause

appearing therefore, it is:

ORDERED, that pending hearing and determination of Plaintiff's Motion for a Preliminary Injunction, the corporate Defendant, Ithaca Produce, Inc., its agents, officers, including Defendants, Richard T. Cutia, Sr., Richard T. Cutia, Jr., and Anne C. Cutia, subsidiaries, assigns, and financial and banking institutions, shall not alienate, dissipate, pay over or assign any PACA trust assets to any creditor, person or entity, without agreement of the parties or until further order of this Court, or until said Defendant pays Monterey Mushrooms the sum of \$43,925.35 by cashiers' check or certified check. Under §499e(c)(2) of PACA, trust assets include perishable agricultural commodities received by a commission merchant, deal or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivable or proceeds from the sale of such commodities or products, and it is further

ORDERED, that this Order shall be binding upon the parties to this action, their officers, agents, employees, banking institutions, or attorneys and all other persons or entities who receive actual notice of this Order by personal service or otherwise, and it is further

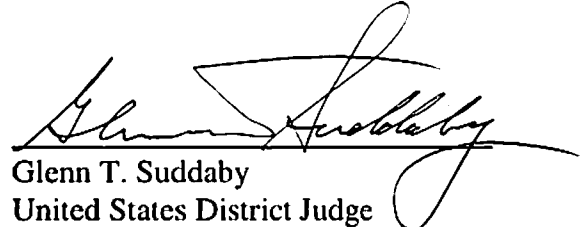
ORDERED, that Monterey Mushrooms is not required to give security in view of the fact that Defendant, Ithaca Produce, Inc., now holds \$43,925.35 of PACA trust assets which are Monterey Mushrooms' property and that this Order merely requires Ithaca Produce, Inc. to obey the requirements of federal law, and it is further

ORDERED, that Monterey Mushrooms must serve Defendants, or their resident agent, or their counsel with a copy of this Order, by personal service, including by facsimile

transmission or federal express, on or before the end of the 20th day of May, 2009. Such service will be deemed good and sufficient.

ORDERED, that Defendants must file any and all responsive papers to Plaintiff's Motion for Preliminary Injunction by May 22, 2009 at 5:00 p.m.

DONE and ORDERED, this 19th day of May, 2009 at Syracuse, New York.



Glenn T. Suddaby
United States District Judge
Northern District of New York